

No. _____

IN THE
Supreme Court of the United States

ANGEL C. PACHECO,

Petitioner,

v.

STATE OF MAINE,

Respondent.

**On Petition for a Writ of Certiorari to
the Maine Supreme Judicial Court
Sitting as the Law Court**

**PETITION FOR A WRIT OF
CERTIORARI**

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QUESTION PRESENTED

The Maine Supreme Judicial Court recently reaffirmed that it follows the majority rule for issuing a search warrant authorizing searches of “any” or “all persons” present at the location to be searched: Do the materials in support of the search warrant demonstrate probable cause that a search of “any persons present” there would yield evidence of a crime? *State v. Pacheco*, 2020 Mem-20-48 (Me. June 4, 2020) (ellipses omitted); *see, e.g., State v. DeSimone*, 288 A.2d 849, 850 (N.J. 1972).

However, the decision below reflects the deepening of a split over what, precisely, the majority rule means. Whereas most jurisdictions evaluate whether there is probable cause that a search of each and every person likely to be present at the scene will yield evidence, several jurisdictions, including Maine, appear to require only probable cause that, collectively, the searches of “any persons present” will yield evidence of a crime.

The question presented is:

(1) Whether, to obtain a search warrant authorizing the search of “any,” “all” or “unknown” persons likely to be found at a residence believed to be used by drug traffickers, an affiant must demonstrate probable cause that each such person possesses evidence of a crime that will be discovered by a search, or only probable cause that all of the searches of such persons, collectively, will yield some evidence of a crime.

PARTIES TO THE PROCEEDING

Angel C. Pacheco, petitioner on review, was the defendant-appellant below.

The State of Maine, respondent on review, was the plaintiff-appellee below.

RELATED PROCEEDINGS

Counsel is not aware of any related proceedings.

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INTRODUCTION

Nearly all courts in the country agree: Search warrants authorizing law enforcement to search “any,” “all” and “unknown” persons present at a residence suspected of being used by drug traffickers are permissible in certain, limited circumstances. In jurisdictions where the issue has arisen, there is notable consensus about the words of the legal standard judicial officers are to apply in evaluating whether an affiant has made the requisite showing: A typical formulation (and that of the decision below) is probable cause that “any person present” possesses evidence of a crime that will be discovered by a search of their person.

The meaning of these words – and, therefore, importantly, application of the law they embody – however, reveals a deep schism. Some courts require a stringent showing: probable cause that each and every person likely to be present (*i.e.*, “any person”) possesses evidence of wrongdoing. Others, though, effectively require something much less: probable cause that searches of everyone present will reveal that someone (*i.e.*, “any person”) possesses evidence of a crime. The split is troubling both for its erosion of Fourth Amendment uniformity and the Amendment’s fundamental precepts.

OPINIONS BELOW

The Maine Supreme Judicial Court’ Sitting as the Law Court’s unreported decision is located at 2020 ME Unpub. LEXIS 49. Pet. App. 1a-2a. The Unified Criminal Docket Court’s decision denying the motion to suppress is not reported. *Id.* at 3a-8a.

JURISDICTION

The Maine Supreme Judicial Court issued the decision below on June 4, 2020.
 Pet. App. 1a. This Court’s jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

U.S. CONST. amend IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

A. **Maine law enforcement officials sought and obtained a search warrant for “any persons” and “unknown persons.”**

On April 5, 2018, Somerset County Sheriff’s Department Detective-Lieutenant Carl E. Gottardi, II averred that he had probable cause to believe that evidence of drug trafficking would be found at a residence located at 3 Dartmouth Street in Skowhegan, Maine. (Pet. App. at 12a-13a.). He further averred that he had probable cause to believe the persons (including body cavities) of certain named individuals and “any persons” contained related evidence, particularly drugs and cash. (*Ibid.*) Det. Gottardi sought a warrant to undertake these searches.

As for the named individuals, the affidavit offered a plethora of information:

- David A. Sincyr and Beverly J. Sincyr, whose dates of birth were noted in the affidavit, are the primary residents of 3 Dartmouth Street. (*Id.* at 12a-14a). During a search of that same address less than two months prior, trace amounts of various drugs were found on paraphernalia in the home. (*Id.* at 13a). At that time, David acknowledged using and selling various illegal drugs, which he claimed to have procured from an “out of [s]tate source.” (*Id.* at 14a). Beverly confirmed David’s drug use and trafficking. (*Ibid.*) A confidential informant reported that David had been selling drugs even after the initial search of 3 Dartmouth Street. (*Id.* at 16a). In fact, David himself admitted to law enforcement agents in early April 2018 that he was actively trafficking drugs. (*Id.* at 17a).
- Mackenzie Garland (a/k/a “Kenzie Garland”) resided in a bedroom at 3 Dartmouth Street at the time of the prior search there, in which trace amounts of fentanyl were discovered. (*Id.* at 13a-14a). Beverly Sincyr told law enforcement officials that David Sincyr was obtaining drugs from “[Garland’s] group of people.” (*Id.* at 14a). However, Garland had moved out of 3 Dartmouth Street by the time Det. Gottardi sought the warrant in this case. (*Id.* at 15a).
- Tom Schmidt was “familiar” to law enforcement officials, who had long suspected him of heroin trafficking. (*Ibid.*). On April 2, 2018, Schmidt told David Sincyr that Sincyr “needed to let some people stay at his [*i.e.*, Sincyr’s] house.” (*Id.* at 14a-15a). Soon thereafter, a male in possession of

cocaine and heroin appeared at 3 Dartmouth Street where he proceeded to traffick in the drugs with Sincyr's assistance. (*Id.* at 14a-17a).

- Miranda Schmidt, who is Tom's daughter, was "involved with Hispanic males from Connecticut who reportedly sell large amounts of heroin and crack cocaine." (*Id.* at 14a-15a). On February 27, 2018, Miranda Schmidt was arrested in Fairfield, Maine while in possession of more than 67 grams of heroin. (*Id.* at 15a). Miranda was David Sincyr's in-state source for cocaine and heroin. (*Id.* at 14a-16a).
- Luis Pacheco ("DOB/09-12-1970")¹ is "a Hispanic male from Connecticut" who is "reportedly Miranda [Schmidt's] boyfriend and drug supplier." (*Id.* at 15a). When Miranda was arrested with heroin, Luis Pacheco was also in the vehicle. (*Ibid.*). That same month, David Sincyr identified Miranda Schmidt and her boyfriend in a photo shown to him by a Maine Drug Enforcement Agency "(MDEA)" special agent as Sincyr's "out of [s]tate source" for drugs. (*Id.* at 14a-16a). On April 3, 2018 – *i.e.*, a few days after Tom Schmidt's directive to David Sincyr – the boyfriend arrived at 3 Dartmouth Street, though there is no averment about long he stayed there. (*Id.* at 16a). David Sincyr felt that the boyfriend threatened him to help traffick drugs or else face unspecified consequences. (*Id.* at 16a).
- Chad Demo and his girlfriend, Casey, were staying at 3 Dartmouth Street just prior to the execution of the search underlying this case. (*Id.* at 15a-

¹ This is neither petitioner's name nor date of birth. (Appellant's Opening Br. at 8 n.3).

16a). Chad Demo transported Carlos to 3 Dartmouth Street. (*Id.* at 15a-17a). His car was used by David Sincyr to deliver drugs. (*Id.* at 15a-16a).

- Carlos appeared at David Sincyr's house after Tom Schmidt told Sincyr he needed to host "some people," and he slept on the couch at 3 Dartmouth Street. (*Id.* at 15a-16a). Carlos did "not speak good English." (*Id.* at 15a). He possessed cocaine and heroin, was selling it, and was having David Sincyr deliver the drugs. (*Id.* at 15a-16a). Sincyr himself admitted to law enforcement on April 5, 2018 that he was assisting Carlos sell drugs by delivering them to customers who place orders by telephone. (*Id.* at 17a-18a). Carlos was said to be hiding the drugs on his person and buried in a garage on the property. (*Id.* at 17a).

When it came to the "any persons" provision, however, the affidavit was thin, to the point that it is less than clear that it addresses the possibility that any persons other than those specifically identified in the affidavit would be present at 3 Dartmouth Street.

- "Male(s)" appeared at 3 Dartmouth Street after Tom Schmidt directed David Sincyr to host them there and assist their drug trafficking. (*Id.* at 14a-17a). These "male(s)" have been accepting orders for drugs and requiring Sincyr to deliver them. (*Id.* at 14a-15a). The "male(s)" made a comment that Sincyr interpreted as a threat that "something may happen to his wife" if he refused to aid their drug sales. (*Id.* at 14a-16a). Law

enforcement had information that Miranda Schmidt was “involved with Hispanic males from Connecticut.” (*Id.* at 14a-15a).

Taken as a whole, however, it is evident that, by “male(s),” Det. Gottardi was simply referring to both Luis Pacheco and Carlos:

- As evidence that Miranda Schmidt was “involved with Hispanic males from Connecticut,” Gottardi averred that “Luis Pacheco, DOB/09-12-1970” had been travelling with Miranda when she was arrested for possession of heroin. (*Id.* at 15a).
- Carlos was identified as “one of the males” who arrived at 3 Dartmouth Street to traffick heroin and cocaine. (*Id.* at 15a-17a).
- “[A]nother male” soon arrived at 3 Dartmouth Street, “and this male is the boyfriend of Miranda Schmidt.” (*Id.* at 16a). Luis Pacheco is Miranda Schmidt’s boyfriend. (*Id.* at 15a).
- After describing Carlos and Luis Pacheco, Det. Gottardi averred that these “males” had threatened harm to David Sincyr’s wife should he not assist their drug enterprise. (*Id.* at 16a).

In other words, the affidavit provided no evidence concerning “males” other than those it specifically named or described. The ambiguous plural form “males” or “male/s,” in context, refers to no one other than the named individuals noted above.

No mention is made in the affidavit of customers coming to 3 Dartmouth Street to pick up narcotics or make payments, except for a boilerplate note that, in the affiant’s experience, “if” others “had just purchased” drugs there, law enforcement

officials executing a search would likely find those drugs, cash, or “drug related paraphernalia” on their persons or in their vehicles. (*Id.* at 18a). But this note about Gottardi’s experience is a non sequitur, considering that the affidavit described trafficking in the form of deliveries from 3 Dartmouth Street via car rather than purchases taking place at the residence. (*Id.* at 13a-17a).

Moreover, from the affidavit, it is observed that Carlos kept the drugs either on his person or hidden outside of the house. (*Id.* at 17a).

At 1:07 p.m. on the same day that Det. Gottardi presented his application and affidavit to a judicial officer, a warrant was granted to search 3 Dartmouth Street, the “property” at 3 Dartmouth Street, “unknown persons,” and “any persons/motor vehicles that are present at said residence/property, and/or arrive/depart from said residence property (who are not conducting official, non-drug related business, such as postal workers etc.)” (*Id.* at 9a-11a). The judicial officer found good cause to allow law enforcement to conduct a nighttime, no-knock search and to search all persons’ body cavities “if applicable.” (*Id.* at 10a-11a).

The warrant itself contains no mention of the affidavit other than noting that the warrant was granted “[o]n the basis” of the affidavit which “accompanies this search warrant and will be filed with this search warrant in the District Court.” (*Id.* at 9a).

B. Law enforcement conducted a search pursuant to the warrant.

“[W]ithin hours” of the warrant’s issuance, law enforcement searched 3 Dartmouth Street. (Appellee’s Br. at 4). Some amount of cocaine base and heroin, as

well as more than \$4,000, were located on petitioner's person. (*Ibid.*) Petitioner was charged with two counts each of aggravated trafficking and unlawful possession, and one count of criminal forfeiture. (Complaint of April 6, 2018).

C. The trial court denied the motion to suppress.

Petitioner moved to suppress the fruits of the search of his person. The trial court convened a non-evidentiary hearing at which the parties presented arguments. In a post-hearing filing, petitioner argued that Det. Gottardi's affidavit failed to generate probable cause that petitioner – *i.e.*, *everyone* at the scene of the search – was involved in a crime. He contended that the resulting warrant was a “general warrant” because it failed to describe petitioner with any particularity, noting that if Det. Gottardi meant to assert that petitioner was the “Carlos” mentioned in the affidavit, the affidavit should have included details about “Carlos's” height, weight and appearance – information which Det. Gottardi's averments suggest was available to law enforcement.

The trial court denied the motion to suppress. It first determined that the “any-persons” and “unknown-persons” language was not “fatal” to the search warrant. (Pet. App. at 5a-6a). It reasoned that, for Fourth Amendment purposes, a search warrant is not “overly broad” if it is supported by a “finding of probable cause that evidence of a crime would be found through a search of anyone present at the residence in question at the time of the search.” (*Id.* at 6a). In fact, the trial court suggested, such a showing might not even be required by the Fourth Amendment. (*Id.* at 5a). Either way, the notion that the affidavit did not generate probable that a

search of anyone present at 3 Dartmouth Street would yield evidence of a crime “basically ignores” Det. Gottardi’s allegations, wrote the court. (*Id.* at 6a).

Turning to the specifics that it felt supported probable cause, the court recited the gist of Det. Gottardi’s averments, framing the question differently than it had in its analysis of the breadth of the warrant:

[T]he question is whether probable cause that evidence of a crime will be found exists *for the place to be searched*. Even if drug transactions were alleged to take place in other locations, probable cause would exist if there is a fair probability that the drugs being supplied at other locations were being stored at the Dartmouth Street residence. The affidavit makes it clear that drugs are being stored at Dartmouth Street, and specifically states that they are in the possession of ‘Carlos.’

(*Id.* at 8a) (emphasis added). Utilizing this standard, the court concluded, “probable cause existed to search the home and ‘any and all persons’ within it for evidence relating to drug trafficking.” (*Ibid.*).

Even if it didn’t, the court concluded, the good-faith exception is applicable, citing *United States v. Leon*, 468 U.S. 897, 923 (1984). (*Ibid.*).

Petitioner entered a conditional plea to one count of each aggravated trafficking and unlawful possession of drugs, as well as the forfeiture count, in exchange for dismissal of the remaining charges.

D. On direct appeal, the Maine Supreme Judicial Court affirmed.

The decision of the Maine Supreme Judicial Court (“Law Court”) below is a two-sentence-long, unpublished “memorandum of decision,” the operative sentence of which petitioner quotes in-full:

Contrary to Pacheco’s contentions, the trial court did not err when it denied his motion to suppress evidence because the affidavit supporting

the search warrant at issue provided a substantial basis for the issuing magistrate’s finding of probable cause that ‘any persons... present at’ the residence in question would possess evidence of a crime, and the resulting warrant was not unconstitutionally broad.* See U.S. CONST. amend. IV; ME. CONST. art. I, § 5; *Ybarra v. Illinois*, 444 U.S. 85, 87-92, 92 n.4 (1979); *State v. Marble*, 2019 ME 157, ¶ 10, 218 A.3d 1157; *State v. Warner*, 2019 ME 140, ¶¶ 19-20, 216 A.3d 22; *State v. Allard*, 674 A.2d 921, 922-23 (Me. 1996).

(Pet App. at 1a-2a).

REASONS TO GRANT THE PETITION

How can a judicial officer authorize a search warrant for “any,” “all” or “unknown” persons present at a residence or motel room law enforcement officials believe is being used by drug traffickers? The Warrant Clause, at first blush, would seem to require greater particularity than that such warrants provide.

Before and since 1979, when this Court observed in a footnote that it had not yet opined on this issue, courts throughout the country have had to resolve the issue for themselves. *Ybarra v. Illinois*, 444 U.S. 85, 92 n.4 (1979). With few exceptions, *infra* (n.2), the courts that have taken up the issue have held that, though disfavored, such provisions are permissible so long as they are supported by affidavits demonstrating probable cause that “anyone in the described place when the warrant is executed is involved in the criminal activity.” Wayne R. LaFave, 2 *Search &*

* The Law Court’s decision included a footnote here: “Because we conclude that the search at issue was not unlawful, we do not address Pacheco’s challenge to the court’s alternative conclusion that the good faith exception to the exclusionary rule applied. See, e.g., *State v. Nunez*, 2016 ME 185, ¶ 17, 153 A.3d 84.” (Pet. App. at 2a)

Seizure: A Treatise on the Fourth Amendment § 4.5(e) (5th ed.). This formula, it is reasoned, satisfies the particularity requirement because executing officers will be able “readily to determine to whom the warrant applies” – literally, everyone present. *Ibid.*

In other words, the particularity requirement is satisfied by inclusion in a search warrant of an “any-,” “all-” or “unknown-persons” clause that is supported by probable cause to search “any” or “all” of those “unknown” persons. This is a sort of two-for-one doctrinal bargain by which, in exchange for an exacting probable cause showing, if it can be made, law enforcement also clears the Fourth Amendment particularity hurdle. *See Owens v. Lott*, 372 F.3d 267, 276 (4th Cir. 2004)), *cert. denied*, 543 U.S. 1050 (2005) (“In our view, the inclusion of ‘all persons’ language in a warrant presents probable cause rather than particularity problems.”)

Where the rubber meets the road, however, many courts, like Maine’s highest court below, are not holding affiants to this demanding standard. Some explicitly eschew the notion that “any-” and “all-person” provisions are based only in probable cause that everyone likely to be searched will possess evidence of wrongdoing. The decision below, while parroting the language of the majority rule – “any persons present at the residence in question would possess evidence of a crime” – reflects a quite different interpretation. (Pet. App. at 1a-2a) (ellipses omitted). Rather than requiring probable cause that *each* search of “any” or “all” persons present will yield evidence of wrongdoing, these courts are satisfied by probable cause that searches of “any” or “all” persons will turn up evidence from *someone* amongst them. Put another

way, those courts applying the law as Maine's courts do authorize a search of everyone if there is probable cause that those searches collectively will yield evidence from someone.

This view of the Fourth Amendment is fundamentally incorrect for many reasons. It does away with any pretense of individualized suspicion. It pegs "probable" cause at an indeterminate, potentially miniscule quantum (surely there is probable cause that search of all residents of an entire city block will reveal evidence of a crime, but probable cause must be measured by each search, individually). And, by tying the particularity requirement to the supposedly exacting showing of probable cause, courts that, in actuality, are satisfied by a lower showing are upholding an incoherent legal fiction.

This case is an opportunity to clarify several long-lingering questions: Can "any-" and "all-persons" warrants coexist with the particularity requirement? If so, what showing must law enforcement make to obtain them? Specifically, must an affidavit establish probable cause that everyone likely to be searched will possess evidence of wrongdoing, or must the affiant show merely that a search of everyone will likely yield evidence from someone?

I. Courts Disagree Whether "Any-" And "All- Persons" Warrants Are Permissible When it is Not Probable that Everyone Likely to be Present at a Residence Where Drugs Are Being Trafficked Will Possess Evidence of a Crime.

A majority of state courts purport to adhere to the principle that the power to search “any” and “all” persons found at the scene of a search is available only when there is probable cause that “any” and “all” persons are engaged in a crime.² Seminal

² *State v. Prior*, 617 N.W.2d 260, 266 (Iowa 2000) *r’hng denied*, 2000 Iowa.Sup.LEXIS 189; *State v. Vandiver*, 257 Kan.53, 63 (1995); *State v. Boyer*, 967 So.2d 458, 465 (La. 2007); *State v. Allard*, 674 A.2d 921, 923 (Me. 1996); *Commonwealth v. Smith*, 370 Mass. 335, 344 (1976); *State v. Hinkel*, 365 N.W.2d 774, 775-76 (Minn. 1985); *State v. Pecha*, 225 Neb. 673, 680 (1987); *State v. DeSimone*, 288 A.2d 849, 850 (N.J. 1972); *People v. Nieves*, 36 N.Y.2d 396, 404 (1975); *State v. Kinney*, 83 OhioSt.3d 85, 90 (1998), *cert. denied*, 526 U.S. 1007 (1999); *State v. Reid*, 319 Ore. 65, 71 (1994); *State v. Jackson*, 2000 SD 113, ¶ 15, 616 N.W.2d 412; *see Betts v. State*, 920 P.2d 763, 764 (Alaska Ct. App. 1996); *People v. Johnson*, 805 P.2d 1156, 1160 (Colo. Ct. App. 1990), *r’hing & cert. denied*, 1991 Colo. LEXIS 134; *Bergeron v. State*, 583 So.2d 790, 791 (Fla. Dist. Ct. App. 1990); *People v. Reed*, 202 Ill.App.3d 760, 763 (Ill. Ct. App. 1990); *People v. Krokker*, 83 Mich.App. 474, 481-82 (Mich. App. 1978); *State v. Light*, 2013-NMCA-075 * 26 (N.M. Ct. App. 2013) (slip op.); *Commonwealth v. Wilson*, 429 Pa.Super 197, 200-01 (Pa. Super 1993), *pet. for appeal denied*, 538 Pa. 657 (1994) ; *State v. Heard*, 2000 Tenn.Crim.App. LEXIS 211 **10-13 (2000) (slip op.), *app. for permission to appeal denied*, (Tenn. 2001); *Morton v. Commonwealth*, 16 Va.App. 946, 950-51 (Va. Ct. App. 1993), *r’hing denied*, 1993 Va.App. LEXIS 570 (1993); *State v. Munoz-Garcia*, 140 Wn.App. 609, 623 (Wash App. 2007); *see also State v. Barefield*, 240 W.Va. 587 (2018); *State v. Blevins*, 968 P.2d 402, 406 (Utah Ct. App. 1998); *State v. Hayes*, 196 Wis.2d 753 (Wis. Ct. App. 1995), *review denied*, 546 N.W.2d 469 (Wis. 1996). A handful of intermediate state courts of appeal have held “all-persons” warrants facially unconstitutional. *Brooks v. State*, 593 So.2d 97, 98-99 (Ala. Crim.

decisions from the highest courts of New Jersey, New York and Massachusetts, since largely adopted by treatise writers and state supreme courts throughout the country, explicitly require as much. *State v. DeSimone*, 288 A.2d 849, 850 (N.J. 1972) (required showing is probable cause “that anyone present at the anticipated scene will probably be a participant”); *People v. Nieves*, 36 N.Y.2d 396, 404 (1975) (“probable cause to believe that the premises are confined to ongoing illegal activity and that every person within the orbit of the search possesses the articles sought.”); *Commonwealth v. Smith*, 370 Mass. 335, 344 (1976) (“probable that any person in the person was a participant in the trafficking in heroin there.”) Each federal court of appeal that has considered the issue requires the same. *United States v. Peep*, 490 F.2d 903, 906 (8th Cir. 1974) (“probable cause existed to search all present”); *Marks v. Clarke*, 102 F.3d 1012, 1027 (9th Cir. 1996) (“probable cause as to each individual present”); *United States v. Shields*, 1999 U.S. LEXIS 2496 * 8 (10th Cir. 1999) (slip op.) (“probable cause to believe those present possessed evidence of criminal activity.”); *Owens v. Lott*, 372 F.3d 267, 276 (4th Cir. 2004), *cert. denied*, 543 U.S. 1050 (2005) (“probable cause to believe that all persons on the premises at the time

App. 1991), *cert. denied*, 506 U.S. 816 (1992); *People v. Tenney*, 25 Cal.App.3d 16, 101 Cal.Rptr. 419, 423 (1972), *overruled on other grounds by People v. Leib*, 16 Cal.3d 869, 548 P.2d 1105, 1108, 129 Cal.Rptr. 433 (Cal. 1976); *State v. Wise*, 284 A.2d 292, 294 (Dela. Super. 1971); *Wallace v. State*, 131 Ga. App. 204, 204-05 (Ga. Ct. App. 1974); *Johantgen v. Commonwealth*, 571 S.W.2d 110, 111-12 (Ky. Ct. App. 1978); *Crossland v. State*, 1954 OK CR 13, 266 P.2d 649, 651 (Okla. Crim. App. 1954).

of the search are involved in criminal activity”); *United States v. Abbott*, 574 F.3d 203, 212 (3d Cir. 2009), *cert. granted*, 559 U.S. 903 (2010), *aff’d on other grounds*, 562 U.S. 8 (2010) (“probable cause to believe that a premises is dedicated to criminal activity”); *see also Church of Universal Love & Music v. Fayette Cnty.*, 892 F.Supp.2d 736, 745 (W.D.Pa. 2012) (defining “dedicated” as “designed to carry out only one task, or set aside for a specific purpose”); *Baker v. Monroe Twp.*, 50 F.3d 1186, 1199 (3d Cir. 1995) (Alito, J., dissenting), *reh’ing denied*, 50 F.3d 1186 (1995) (“probable cause to believe that all persons found on the premises of the apartment were involved in [criminal activity].”). On paper, Maine follows suit. *State v. Allard*, 674 A.2d 921, 923 (Me. 1996) (“probable anyone in the described place when the warrant is executed is involved in the criminal activity in such a way as to have evidence thereof on his person”) (quoting 2 LaFave, *Search and Seizure* § 4.5(e) (3d ed. 1996)).

However, among jurisdictions that have adopted this standard, application is subject to profound disagreement. There are two camps: one that requires probable cause that each and every person present is in possession of evidence of a crime, and another that requires merely probable cause that someone amongst that crowd is in possession of such evidence. The former – which petitioner calls the strict standard – recognizes a necessity of their doctrine: If probable cause is lacking as to any person likely to be present, an “any-” and “all-persons” provision is unconstitutionally deficient in probable cause. The latter – which petitioner calls the loose standard – tolerates a probability that innocent individuals (*i.e.*, persons for whom there is no probable cause) will be searched pursuant to an “any-” or “all-persons” clause.

A. Application of the Strict Standard. In describing the fulcrum of the majority view, Professor LaFave writes:

[T]he question is whether there is sufficient particularity in the probable cause sense, that is, whether the information supplied the magistrate supports the conclusion that it is probable anyone in the described place when the warrant is executed is involved in the criminal activity in such a way as to have evidence thereof on this person.

2 Search & Seizure, § 4.5(e) (5th ed.) Others have observed that this showing is exacting. William E. Ringel, *Searches and Seizures, Arrests and Confessions* § 5:17 (2d ed. July 2020 update) (“carefully limited circumstances”); *Smith*, 370 Mass. at 339, 344 (“only in special circumstances” that are “strictly scrutinized”); *Nieves*, 36 N.Y.2d at 404 (“severely limited”).

Afterall, as contemplated by the majority rule, “all-persons” warrants sit at the juncture of the probable-cause and particularity requirements. Satisfaction of the former all but ensures compliance with the latter. Together, these requirements are the font of the concept of individualized suspicion and comprise the bulwark against general searches and rummaging. *See Maryland v. Garrison*, 480 U.S. 79, 84 (1987); *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971). In that vein, the requirements of probable cause and particularity ensure that any search authorized by warrant “will be carefully tailored to its justifications.” *Garrison*, 480 U.S. at 84; *see Zurcher v. Stanford Daily*, 436 U.S. 547, 564 (1978).

Thus, courts adhering to the strict standard for issuing “all-persons” warrants apply the probable-cause standard rigorously. When others – either named, identified, or simply plausible, based on the circumstances – are likely to be at the

site during the search, these courts require probable cause to believe searches of those persons will turn up evidence of wrongdoing. For instance, when an affidavit notes that individuals live at or visit a residence at which drug trafficking is suspected but is otherwise silent about their ties to criminal activity, there is insufficient particularized suspicion to support the “any persons” search provision. *See Commonwealth v. Brown*, 68 Mass.App.Ct. 261, 267 (2007) (affidavit contains no implication that the defendant’s mother or any visitors are involved in crime); *Commonwealth v. Robinson*, 2008 Mass.App.Unpub. LEXIS 417 *5 (2008), *reported at* 2008 Mass.App. LEXIS 419, *review denied*, 451 Mass. 1107 (2008) (only reference in affidavit to the defendant was that he paid electric bills at apartment suspected and was boyfriend of a suspect); *Church of Universal Love & Music*, 892 F.Supp2d at 745 (affidavit notes that one suspect told informants that he had no drugs available for purchase on day of search).

To hold otherwise would undermine this Court’s case-law about probable cause. *See Ybarra*, 444 U.S. at 91 (“[A] person’s mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person.”); *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (“An individual’s presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime.”); *Sibron v. New York*, 392 U.S. 40, 62 (1968) (“The inference that persons who talk to narcotics addicts are engaged in the criminal traffic in narcotics is simply not the sort of reasonable inference required to support an intrusion by the

police upon an individual's personal security.”); *Brown v. Texas*, 443 U.S. 47, 52 (1979) (“The fact that appellant was in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that appellant himself was engaged in criminal conduct.”)

These courts also recognize a corollary: Though an affidavit may be silent about the presence of others at the place and time to be searched, innocent persons for whom there is no probable cause to search may nonetheless be there. *United States v. Guadarrama*, 128 F.Supp.2d 1202, 1212 n. 14 (E.D.Wisc. 2001) (“Innocent persons are likely to be present in a residence, even if there is probable cause that the residence also contains evidence of illegal activity.”); *DeSimone*, 288 A.2d at 851 (“In the case of a dwelling there is a great likelihood that an innocent person could happen to visit the occupant”); *Marks*, 102 F.3d at 1029 (not possible to establish probable cause sufficient to justify “all persons” provision for “a raid on a family home where innocent family members or friends might be residing or visiting.”); *Prior*, 617 N.W.2d at 266; *State v. Wynne*, 552 N.W.2d 218, 221 (Minn. 1996); *United States v. Utley*, 2018 U.S. Dist. LEXIS 73363 *10 (M.D. Tenn. 2018); *Munoz-Garcia*, 166 P.3d at 855-56; *State v. Carter*, 901 P.2d 335, 338-39 (Wash. App. 1995); *State v. Jackson*, 30 Kan.App.2d 288, 295-96 (Kan. Ct. App. 2002); *State v. Horn*, 15 Kan.App.2d 365, 367 (Kan. Ct. App. 1991), *pet. for review denied*, 248 Kan. 998 (1991); *see also State v. Light*, 2013-NMCA-075, ¶ 28 (N.M. Ct. App. 2013) (slip op.). Afterall, weighing probable cause requires judicial officers to indulge “the factual and practical considerations of everyday life.” *Illinois v. Gates*, 462, U.S. 213, 231 (1983) (quoting

Brinegar v. United States, 338 U.S. 160, 176 (1949)). The notion that not everyone where drugs are being trafficked is committing a crime is just such. While an affiant may be able to establish probable cause to the contrary, that is done only with specific averments based on investigation. *See Osborne v. State*, 421 P.3d 113, 120 (Alaska Ct. App. 2018); *Jackson*, 30 Kan.App.2d at 295.

Such particularized suspicion is not developed by boilerplate or general assertions about what drug trafficking scenes typically look like. *People v. Mothersell*, 14 N.Y.3d 358, 366 (2010) (affiant’s statement that it is “not uncommon that persons found in the subject residence could reasonably be expected to conceal cocaine” is insufficient to justify “all-persons” provision); *Owens*, 372 F.3d at 276 (affiant’s statement that, in his “experience in drug enforcement...subjects present at the scene of [an] illegal drugs distribution...commonly have drugs in their possession” is insufficient to justify “all-persons” provision); *see also United States v. Swift*, 720 F.Supp2d 1048, 1057-58 (E.D.Ark. 2010), *aff’d sub nom United States v. Moya*, 690 F.3d 944 (8th Cir. 2012). Without something more, these statements express little more than hunches about what might be found at *this* search. *See United States v. Arivizu*, 534 U.S. 266, 273-74 (2002) (a “mere ‘hunch’” is insufficient to generate reasonable, articulable suspicion, let alone probable cause).

Certain temporal considerations also characterize this exacting approach to “all-persons” warrants. For one, when a warrant authorizes a daytime search, it is more likely that “relatives, guests or hired workpeople could have been present on the residential premises to be searched.” *Wynne*, 552 N.W.2d at 221; *Nieves*, 36

N.Y.2d at 405 (affidavit must describe presence of individuals at “the times of day or night when the warrant is sought to be executed.”); *see Prior*, 617 N.W.2d at 365-67; *State v. Reid*, 319 Ore. 65, 71 (Ore. 1994); *cf. Hinkel*, 365 N.W.2d at 776. Relatedly, when an “any-” or “all-person” provision is included in a warrant that does not limit the hours during which the search may be executed, police are afforded considerable discretion over the scope of the warrant. *See Nieves*, 36 N.Y.2d at 405 (appropriate for “all-persons” warrant to “specify the time for the search.”) Likewise, officers executing “all-persons” warrants are no doubt aware of the incentive to string out searches and thereby cast a wider net for subjects to search. *See Michigan v. Summers*, 452 U.S. 692, 711-12 n.5 (1981) (Stewart, J., dissenting) (noting Fourth Amendment infirmity in allowing officers to “protract” a search if doing so serves their interests).

These final inherent grants of discretion unique to “all-persons” warrants seemingly conflict with the goal of the particularity requirement that “nothing is left to the discretion of the officer executing the warrant.” *Stanford v. Texas*, 379 U.S. 476, 485 (1965) (quoting *Marron v. United States*, 275 U.S. 192, 196 (1927)); *Andresen v. Maryland*, 427 U.S. 463, 480 (1976); *see Lo-Ji Sales v. New York*, 442 U.S. 319, 325 (1979); *Zurcher*, 436 U.S. at 564. But they also reveal a problem with probable cause itself. Probable cause is time-limited: “Because the probable-cause requirement looks to whether evidence will be found *when the search is conducted*, all warrants are, in a sense, ‘anticipatory.’” *United States v. Grubbs*, 547 U.S. 90, 95 (2006) (emphasis in original). An application, then, for a search warrant for all people, who, by their

nature, can readily come and go, that does not address the probability that those people will have come or gone, is not descriptive of probable cause. *See Gates*, 462 U.S. at 231 (1983) (courts weighing probable cause “deal with probabilities.”) (quoting *Brinegar*, 338 U.S. at 176). Courts strictly requiring probable cause will not uphold warrants that fail to address these questions. *See, e.g., Prior*, 617 N.W.2d at 365-67.

B. Application of the Loose Standard. Not all courts agree, however. The Supreme Court of South Dakota believes the foregoing imposes “too high a burden” on law enforcement seeking to search everyone likely present at the scene of a search. *State v. Jackson*, 2000 SD 113, ¶ 24, 616 N.W.2d 412; *State v. Running Shield*, 2015 SD 78, ¶ 11 n.3, 871 N.W.2d 503 (“This is a stricter standard than we employ.”) The lower court in our case cited these decisions. (Pet. App. at 5a).

To illustrate its position, the South Dakota Supreme Court quoted the following approvingly:

Though it is certainly possible, even probable, that innocent third parties who happen to be at the wrong place at the wrong time may be subjected to searches under such warrants, the nexus between the person to be searched and the nature and the seriousness of the criminal conduct suspected on probable cause, nonetheless, renders the **probability** of their culpable participation in the crime suspected sufficient to warrant a search of their person....

Jackson, 2000 SD 113, ¶ 24 (quoting *Commonwealth v. Graciani*, 554 A.2d 560, 562-63 (Pa. Super 1989) (bold in *Jackson*; underline added here)). “[T]o hold that an affidavit must contain facts showing that nothing but illegal activity is taking place in a location before an ‘all persons’ warrant may be issued ‘would simply deny

government a needed power to deal with crime, without advancing the interest the Fourth Amendment was meant to serve.” *Jackson*, 2000 SD 113, ¶ 23 (quoting *DeSimone*, 288 A.2d at 851) (brackets omitted)).

South Dakota is not alone in tolerating the probability that its “any-” and “all-persons” searches will authorize searches of innocent individuals. Courts in Utah and Wisconsin do, too. *State v. Blevins*, 968 P.2d 402, 406 (Utah App. 1998); *State v. Hayes*, 196 Wis.2d 753, 763-67 (Wis. Ct. App. 1995), *review denied*, 546 N.W.2d 469 (Wis. 1996). West Virginia’s highest court discerns only a “slight contrast” between the camp requiring probable cause that everyone present possesses evidence of a crime on their person and the camp that does not. *State v. Barefield*, 240 W.Va. 587, 594 (W.Va. 2018). In either case, the requirement should be “flexible,” according to the Supreme Court of West Virginia. *Ibid.*

A judge sitting in the Eastern District of Wisconsin, disagrees that the distinction is “semantical.” *Ibid.* With experience in cases involving “all-persons” warrants issued pursuant to this loose standard, the judge relates that “every search warrant for drugs may, as a matter of routine, authorize searching every person on the premises, so long as police supply readily-available boilerplate affidavit language asserting drug-related contraband is often found on persons on premises that are suspected of having drugs.” *Guadarrama*, 128 F.Supp.2d at 1210 n.12. Going one step further, in Tennessee, courts read these loose-standard cases to create a “legally recognized *presumption* that a person occupying a private premises is a participant in the illegal activity when the alleged crime involves drug trafficking” – a

“presumption” the Tennessee court adopted. *State v. Heard*, 2000 Tenn.Crim.App. LEXIS 211 **10-13 (2000) (slip op.), *app. for permission to appeal denied*, (Tenn. 2001).

The Supreme Court of Nebraska has adopted a comparable standard. A warrant authorizing the search of “persons unknown” in that jurisdiction need be based on a showing only that “there would be ‘persons unknown,’ in addition to [the named individual renting a hotel room], in the hotel room who would engage in illegal drug activity.” *State v. Johnson*, 243 Neb. 758, 764 (1993). At bottom, this interpretation reflects a departure from the strict-standard view: Rather than establish probable cause that each individual likely to be present possesses evidence of wrongdoing on their person, an affiant must merely establish probable cause that someone amongst those likely to be present will possess evidence of a crime.

Judge Gould of the Ninth Circuit has explained that the problem with these courts’ interpretation is that “all-persons” warrants “may be upheld even without individualized suspicion.” Hon. Ronald M. Gould & Simon Stern, *Catastrophic Threats and the Fourth Amendment*, 77 S.CAL.L.REV. 777, 798 (2004). This loose-standard line of cases controverts the individualized-suspicion requirement by applying “a test that asks about the likely presence of guilty persons without considering innocent persons.” *Ibid.* Judge Gould concludes that the reason courts applying the loose standard either do not address or downplay individualized suspicion is that they “cannot easily reconcile the individualized-suspicion

requirement with a rule that permits searches of multiple persons, particularly when their total number is unknown.” *Id.* at 799.

Instead of dealing with individualized suspicion, courts adhering to this interpretation often describe their formula as one requiring proof of “nexus.” *Barefield*, 240 W.Va. at 596; *Heard*, 2000 Tenn. Crim. App. LEXIS 211 * 11; *Hayes*, 196 Wis.2d at 763; *Blevins*, 968 P.2d 403; *Jackson*, 2000 SD 113, ¶ 15; *Graciani*, 554 A.2d at 563. While it is true both that, generally, the Fourth Amendment does require proof of “nexus,” *see, e.g., Warden, Maryland Penitentiary v. Hayden*, 387 U.S. 294, 306-07 (1967), and that the majority rule cases also refer to nexus, *see, e.g., DeSimone*, 288 A.2d at 850, in neither case is nexus a stand-in for individualized suspicion. *See Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (probable cause “must be particularized with respect to the person to be searched or seized.”).

II. The Decision Below Implicitly Adopts the Loose Standard, Upholding A Warrant Authorizing Searches of Individuals Probably *Not* in Possession of Evidence of a Crime.

On its face, the Law Court’s one-sentence-long analysis reveals only that, like a majority of jurisdictions, it interprets the Fourth Amendment to permit “any-” and “unknown-persons” search provisions if there is probable cause that “any persons present” will possess evidence of criminal wrongdoing. As demonstrated by the foregoing discussion, however, courts have identified two divergent interpretations of what that standard means. The Law Court’s summary decision obscures where it sits on this divide. *See Paris v. Adult Theatre I. v. Slaton*, 413 U.S. 49, 83 (1973)

(Brennan, J., dissenting) (“By disposing of cases through summary reversal or denial of certiorari we have deliberately and effectively obscured the rationale underlying the decisions.”). But a resort to the facts reveals that the Law Court is applying the loose standard, not requiring probable cause that each person likely present will possess evidence of criminal wrongdoing. *Ornelas v. United States*, 517 U.S. 690, 697 (1996) (“[T]he legal rules for probable cause and reasonable suspicion acquire content only through application.”); see *Miller v. Fenton*, 474 U.S. 104, 114 (1985).

Even according deference to the warrant-issuing official, there is no substantial basis to determine that everyone likely to be present at 3 Dartmouth Street was in possession of evidence of a crime. See *Massachusetts v. Upton*, 466 U.S. 727, 732-33 (1984). The Law Court could not have reached that conclusion; rather, it must have determined, pursuant to the loose standard described above, that, collectively, searches of “any persons present” would yield some evidence of a crime. That is so for several reasons.

First, there is no probable cause as to at least one person *named* in the affidavit as a resident of 3 Dartmouth Street. The girlfriend of Chad Demo, one Casey, is said to be staying at the residence, occupying a bedroom with Mr. Demo. (Pet. App. at 15a-16a). Mr. Demo himself, the affiant averred, “does not sell drugs,” though he does “transport” others who are selling drugs, perhaps (the affidavit does not state) while they are delivering the drugs. (*Id.* at 15a-17a). Regardless of Mr. Demo, there is nothing more in the affidavit about Casey. The notion that a search of her person

would probably turn up evidence of a crime, therefore, must be based on indirect information.

However, the trafficking detailed in the affidavit does not involve individuals coming to 3 Dartmouth Street to purchase drugs, making it entirely plausible that Casey or others were not privy to the nature of the trafficking operation (let alone participating in it). Rather, according to the affidavit, *identified* individuals at the residence are said to be taking orders by telephone and then delivering the orders elsewhere. (*Id.* at 14a-17a). As for the drugs, the affiant reports that they are being kept on Carlos's person or in a buried coffee can on the property. (*Id.* at 17a). There is no suggestion that drugs are left out in the open for others to view or take – let alone that Casey or others might have actually done so.

Second and relatedly, there is no discussion of non-named visitors or drug purchasers coming to 3 Dartmouth Street. Nor is there discussion of surveillance of the property to observe whether innocent persons – guests, residents, family members, etc. – were commonly coming and going from the residence.

What's left as to Casey and any visitors to the property are Det. Gottardi's lengthy averments about what is customary in his experiences with drug-trafficking investigations:

Your affiant has found it common for illicit drug traffickers/persons in the company of illicit drug traffickers/illicit drug users, who are in motor vehicles, to store said illicit drugs inside their property – personal belongings, to further conceal said illicit drugs.

Your affiant has found it common for illicit drug traffickers – persons in possession of illicit drugs, to conceal said illicit drugs inside their body cavities, while transporting said illicit drugs in motor vehicles, to avoid detection of said illicit drugs by the police. Your affiant

has personally been advised by apprehended illicit drug traffickers – persons who have possessed illicit drugs, that this is a common practice used by them, when transporting said illicit drugs.

Your affiant has found it common for persons that are located inside motor vehicles with illicit drug traffickers, to possess illicit drugs, which said person had just acquired from said illicit drug trafficker. Your affiant has found it common for said persons to possess cash for the purchase of said illicit drugs, as well as illicit drug related paraphernalia, to ingest said illicit drugs.

Your affiant has found it common for persons who are at the residences of illicit drug traffickers, arrive at the residences of illicit drug traffickers, and/or are departing from the residences of illicit drug traffickers, to possess illicit drugs on their person, and/or in their motor vehicles/property. Your affiant would note, that if persons present at – departing from illicit drug traffickers residences, had just purchased illicit drugs from the illicit drug traffickers, said persons would have illicit drug on their person, and/or in their motor vehicle/property.

Your affiant has found it common for persons who are arriving at an illicit drug trafficker's residence, to have amounts of cash on their person, and/or in their motor vehicle, to use for the purchase of said illicit drugs. Your affiant has also found it common for persons at an illicit drug trafficker's residence, to be delivering illicit drugs to the drug dealer.

Your affiant has found it common for persons that are at, and/or arriving at an illicit drug trafficker's residence, to possess drug related paraphernalia, on their person, and/or in their motor vehicle, which these persons would use to ingest said illicit drugs.

Your affiant has found it common for illicit drug traffickers, who use illicit drugs themselves, to possess illicit drugs and drug related paraphernalia, on their person, in their residence, in their property, as well as in any motor vehicle that they may be located in.

Your affiant has found it common for illicit drug traffickers and their drug associates, to discard illicit drugs when they observe the police trying to apprehend them.[...]

Your affiant has found it common for illicit drug traffickers to take illegal articles, such as stolen property & firearms, in trade for illicit drugs. Your affiant has also found it common for illicit drug purchasers to trade said illegal articles with drug dealers for illicit drugs. If any illegally possessed articles are located during the execution of this search warrant, said articles will be seized, pursuant to this search warrant.

(*Id.* at 18a-19a). These are boilerplate statements³ that, in the circumstances, amount to little more than hunches. Moreover, they do not appear relevant to the facts at hand, given the specific averments about drug deliveries being made *away* from 3 Dartmouth Street. These bald, general averments do not amount to particularized suspicion. *See Blevins*, 968 P.2d at 407-08 n. 4. (Orme, J., dissenting) (“Would the majority find probable cause to search the residence if, without more, the affiant stated that, in his experience and training, marijuana was being sold at the residence? Of course not. They would want to know what facts support that conclusion. The reference to persons coming to the residence and their vehicles is on precisely the same footing: No facts set forth in the affidavit demonstrate probable cause with the requisite particularity.”)

Third, there is no restriction on law enforcement whatsoever. They were authorized to search any time of day or night. They could search as long as they like. They did not have to knock upon entering. They were even authorized to search “any person’s” *body cavities* “if applicable.” (Pet. App. at 9a-10a). Such expensive authority left law enforcement wielding tremendous discretion over what they could search. Based on the specific averments that point *away* from an inference of probable cause to search some people likely to be at the residence, and the paucity of

³ Petitioner describes these as “boilerplate” because they are nearly verbatim to averments that Det. Gottardi included in his affidavit in support of the application to conduct the prior search of 3 Dartmouth Street, which Gottardi appended to the affidavit in this case.

individualized suspicion resulting from Det. Gottardi's boilerplate "experience," it is simply not so that there was sufficient cause to justify that broad grant of authority.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

RORY A. MCNAMARA
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August 27, 2020

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem 20-48
Docket No. Som-19-420

STATE OF MAINE

v.

ANGEL C. PACHECO

Argued May 11, 2020
Decided June 4, 2020

Panel: MEAD, GORMAN, JABAR, HUMPHREY, HORTON, and CONNORS, JJ.

MEMORANDUM OF DECISION

Angel C. Pacheco appeals from a judgment of conviction of aggravated trafficking of scheduled drugs (Class A), 17-A M.R.S. § 1105-A(1)(H) (2020), and unlawful possession of scheduled drugs (Class C), 17-A M.R.S. § 1107-A(1)(B)(3) (2020), entered by the trial court (Somerset County, *Mullen, D.C.J.*) on conditional guilty pleas after the denial of Pacheco's motion to suppress evidence.¹ *See* M.R.U. Crim. P. 11(a)(2). Contrary to Pacheco's contentions, the trial court did not err when it denied his motion to suppress evidence because the affidavit supporting the search warrant at issue provided a substantial basis for the issuing magistrate's finding of probable cause that "any persons . . . present at" the residence in question would possess evidence

¹ The court also ordered the forfeiture of a sum of money pursuant to 15 M.R.S. § 5826 (2017). Portions of section 5826 have since been amended. *See, e.g.*, P.L. 2019, ch. 97, §§ 4-6 (effective Sept. 19, 2019) (codified at 15 M.R.S. § 5826(1)-(2), (6) (2020)). Pacheco has not challenged the forfeiture order on appeal.

of a crime, and the resulting warrant was not unconstitutionally broad.² See U.S. Const. amend. IV; Me. Const. art. I, § 5; *Ybarra v. Illinois*, 444 U.S. 85, 87-92, 92 n.4 (1979); *State v. Marble*, 2019 ME 157, ¶ 10, 218 A.3d 1157; *State v. Warner*, 2019 ME 140, ¶¶ 19-20, 216 A.3d 22; *State v. Allard*, 674 A.2d 921, 922-23 (Me. 1996).

The entry is:

Judgment affirmed.

Brad C. Grant, Esq. (orally), Ferris, Gurney, Grant & Crook PA, Waterville, for appellant Angel C. Pacheco

Maeghan Maloney, District Attorney, and Francis J. Griffin, Jr. (orally), Asst. Dist. Atty., Prosecutorial District IV, Skowhegan, for appellee State of Maine

Somerset County Unified Criminal Docket docket number CR-2018-577
FOR CLERK REFERENCE ONLY

² Because we conclude that the search at issue was not unlawful, we do not address Pacheco's challenge to the court's alternative conclusion that the good faith exception to the exclusionary rule applied. See, e.g., *State v. Nunez*, 2016 ME 185, ¶ 17, 153 A.3d 84.

STATE OF MAINE
SOMERSET, ss.

UNIFIED CRIMINAL DOCKET
SKOWHEGAN
DOCKET NO. CD-CR-18-577

STATE OF MAINE

v.

**ORDER ON DEFENDANT'S
MOTION TO SUPPRESS**

ANGEL PACHECO,
Defendant

Hearing was had on June 28, 2019 with respect to the Defendant's Motion to Suppress dated April 19, 2019. After hearing, and after the Court has had an opportunity to review its notes taken during the hearing, the entire court file, and pertinent case law and statutes, the Court makes the following Findings of Fact and Conclusions of Law upon which the Court enters the **Order** set forth below:

I. Background:

1. On February 9, 2018, Officer Gottardi (hereinafter "Gottardi") of the Somerset County Sheriff's Department executed a drug search warrant at 3 Dartmouth Street¹ in Skowhegan, Maine, the residence of one David Sincyr (hereinafter "Sincyr"). Items of drug paraphernalia which tested positive for fentanyl were seized during the resulting search of the residence. The search warrant was based upon the belief that David Sincyr was involved in the sales and use of crack cocaine and heroin, and was supported in an affidavit setting forth Mr. Sincyr's extensive history with drugs going back to 2013, *see* Affidavit in SW-18-013 for more details.

2. Gottardi subsequently interviewed Sincyr, who explained that Sincyr had been using and selling illegal drugs. Mr. Sincyr's wife supplied corroborating information in a separate interview. *Id.*

3. Sincyr contacted Gottardi on April 4, 2018, with drug trafficking-related information that involved Sincyr himself and his aforementioned residence that was occurring in April of 2018.

4. Gottardi subsequently sought and obtained another search warrant for the Sincyr's, their aforementioned residence, and "unknown persons . . . any

¹ Defense counsel references the address to be "103 Dartmouth Street."

persons/motor vehicles that are present at said residence/property, and/or arrive/depart from said property . . . during the execution of this search warrant.”² See search warrant dated April 5, 2018, for more details.

5. On April 19, 2019, Angel Pacheco (hereinafter “Defendant”) moved this Court to suppress evidence seized as a result of the search warrant. Significant quantities of cocaine, heroin, and cash were seized. As a result of the seizure the Defendant has been charged with two counts of Class A aggravated trafficking in schedule W drugs, two counts of Class C unlawful possession of schedule W drugs, and criminal forfeiture of \$4,240.

6. The Defendant was searched on April 5, 2018, while at the Sincyr’s residence. The Defendant argues that because he was not specifically named in the search warrant or mentioned in the affidavit submitted in support of the warrant, that the search of him was unlawful and lacked probable cause. He focuses on the “unknown persons” language within the affidavit and warrant.

II. Standard of Review:

7. The Court must give great deference to the issuing magistrate, i.e. courts must give the supporting affidavit a positive reading and review the affidavit with all reasonable inferences that may be drawn to support the magistrate’s determination. *State v. Estabrook*, 2007 ME 130, ¶ 5, 932 A.2d 549. Whether probable cause exists for a warrant to issue must be evaluated solely within the four corners of the affidavit. *State v. Johndro*, 2013 ME 106, ¶¶ 9, 12, 60 A.3d 783. The Court should draw all reasonable inferences from the affidavit to support a finding of probable cause, and limit any inquiry to whether there is a substantial basis for the finding of probable cause under the totality of the circumstances test. Such a test requires “a practical, common-sense decision whether, given all the circumstances set forth in the affidavit, . . . including the veracity and basis of knowledge of persons supplying the hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *State v. Wright*, 2006 ME 13, ¶ 8, 890 A.2d 703.

8. When the Law Court reviews a denial of a motion to suppress evidence seized via a search warrant, it “review[s] directly the finding of probable cause made by the judicial officer who issued the warrant, affording that finding great deference.” *State v. Samson*, 2007 ME 33, ¶ 11, 916 A.2d 977. The reviewing court limits its inquiry to “whether there is a substantial basis for the finding of probable cause under the totality of the circumstances test.” *State v. Arbour*, 2016 ME 126, ¶ 12, 146 A.3d 1106. The Law Court reviews a trial court’s factual findings for clear error, but its legal conclusions de novo. *State v. Babb*, 2014 ME 129, ¶ 9, 104 A.3d 878 (citing *State v. Drown*, 2007 ME 142, ¶ 6, 937 A.2d 157). It upholds the trial court’s denial of a motion to suppress “if any reasonable view of the evidence supports the trial court’s decision.” *Babb*, 2014 ME 129, ¶ 9, 104 A.3d 878.

² This language also appeared in the February 2018 affidavit supporting the resulting search warrant, and appears to be of the boilerplate variety.

III. Discussion:

9. Defense counsel argues that the search warrant executed on April 5, 2018, was a "general warrant prohibited by law . . .", citing *Ybarra v. Illinois*, 444 U.S. 85 (1979), and further that the warrant was not supported by probable cause.

10. The undersigned rejects both arguments for the reasons set forth below:

(A) Is the "Unknown Person" Wording Fatal to the Search Warrant?

11. First of all, the fact pattern present in this case and the fact pattern present in *Ybarra v. Illinois* are very distinguishable, including but not limited to the fact that *Ybarra* involved a search of a bar, a public place, in contrast to a private residence in this case. The more public a place, the less likely a search of all persons present will be sustained. See *State v. Range*, 642 So. 2d 1318, 1322 (La. Ct. App. 1994). ("Common sense suggests that there is a much greater likelihood that a person found in a small private residence containing drugs will be involved in the drug activity occurring there than an individual who happens to be in a public tavern where the bartender is suspected of possessing drugs. Police officers are not blind to these realities and courts should not encourage them to be.").

12. Further, the people to be searched in *Ybarra* were restricted to "Greg, the bartender . . ." whereas in this case the search warrant authorized a search of "any persons" present at the residence and/or who arrived during the execution of the search warrant. Although some jurisdictions find "all persons" warrants to be unconstitutional, most jurisdictions draw on the particular facts and circumstances present to determine the validity of such warrants. *State v. Prior*, 617 N.W.2d 260, 265 (Ia. 2000). In *Prior*, the Supreme Court of Iowa held that there must be evidence that gives rise to an inference that all persons on the premises would necessarily be involved in the illegal activity. Thus, any "all persons" warrants meet the particularity and probable cause requirements of the Fourth Amendment only in limited circumstances where there is probable cause to believe that the premises are confined to ongoing illegal activity and that every person within the orbit of the search possesses the articles sought. *Id.* at 265.

13. Other courts have not required such a high standard, such as the South Dakota Supreme Court in *State v. Running Shield*, 2015 SD 78, in which the Court held that the standard articulated in *Prior* was stricter than the South Dakota Supreme Court required. The Court went on to hold:

"This is a stricter standard than we employ....to hold that an affidavit must contain facts showing that nothing but illegal activity is taking place in a location before an 'all persons' warrant may be issued would simply deny government a needed power to deal with crime, without advancing the interest the Fourth Amendment was meant to serve." See also *State v. De Simone*, 60 N.J. 319, 288 A.2d 849, 851 (N.J. 1972).

14. In *State v. Allard*, 674 A.2d921 (Me. 1996) the Law Court rejected the Defendant's contention that the search of his person violated his state and federal rights pursuant to the United States and Maine Constitutions because the "any and all persons" search warrant was overly broad and not based upon probable cause. The affidavit supporting the issuance of the search warrant in *Allard* was found to be supportive of the magistrate's finding of probable cause that evidence of a crime would be found through a search of anyone present at the residence in question at the time of the search.

15. The undersigned finds that same rationale to support the legality of the search warrant present in this matter as well. In evaluating whether the warrant amounted to a general warrant in violation of the Constitution, the *Allard* Court quoted the LaFave treatise and followed its guidance. It explained that

[a] search warrant authorization to search all persons found within a specifically described place is not lacking in particularity in the sense that the executing officer will be unable readily to determine to whom the warrant applies. Rather, the question is whether there is sufficient particularity in the probable cause sense, that is, whether the information supplied the magistrate supports the conclusion that it is **probable** anyone in the described place when the warrant is executed is involved in the criminal activity in such a way as to have evidence thereof on his person.

State v. Allard, 674 A.2d 921, 923 (Me. 1996) (quoting 2 LaFave, *Search and Seizure* § 4.5(e) (3d ed. 1996). (Emphasis added).

16. Defense counsel attempts to distinguish *Allard* from this case by arguing that "drug transactions are taking place at other locations" instead of the residence. This argument basically ignores the facts alleged in paragraphs 1 through 6 of the affidavit filed in support of the search warrant.

17. In summary, this Court does not find the search warrant in this case suffering from any constitutional infirmity due to the "unknown persons/any persons" language such that the Motion to Suppress should be granted.³

³ But see *United States v. Swift*, 720 F. Supp. 2d 1048 (E.D. Ark. 2010) in which the presiding magistrate describes the "any and all" language as "nettlesome" to him and noting that some state courts have held that such "any and all" language is *per se* unconstitutional for lack of particularity. The undersigned does not find Maine to fall within that category of states. Two excellent discussions of the state of the law on this topic across the State and Federal courts are found in *United States v. Guadarrama*, 128 F. Supp. 2d 1202 (E.D. Wisc. 2001) and *United States v. Utley*, 2018 U.S. Dist. LEXIS 73363 (M.D. Tenn. 2018).

(B) Did Sufficient Probable Cause Exist for the Warrant to Issue Regarding the Residence to be Searched?

18. Whether probable cause existed for a warrant to issue must be evaluated solely within the four corners of the affidavit. *See State v. Johndro*, 2013 ME 106, ¶¶ 9, 12, 82 A.3d 820. The affidavit must be read in a positive light in support of the warrant, and the reviewing court must “consider all reasonable inferences that may be drawn from information in the affidavit.” *State v. Samson*, 2007 ME 33, ¶ 11, 916 A.2d 977.

19. When “there is a fair probability that contraband or evidence of a crime will be found in a particular place” based on the totality of the circumstances, probable cause exists. *Id.* ¶ 12. The totality of the circumstances analysis requires a “practical, common-sense decision” considering all the circumstances in the affidavit, “including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information.” *State v. Wright*, 2006 ME 13, ¶ 8, 890 A.2d 703 (quoting *State v. Higgins*, 2002 ME 77, ¶ 20, 796 A.2d 50). The following facts are taken from the Affidavit and Request for Search Warrant dated April 5, 2018.

20. Detective Lieutenant Gottardi had previously obtained and executed a search warrant for 3 Dartmouth Street in Skowhegan on February 9, 2018, based on the belief that Sincyr was involved in the sales and use of crack cocaine and heroin. On the same date, the warrant was executed, drugs and paraphernalia were seized, and Gottardi interviewed Sincyr, who explained that he had been using and selling drugs.

21. On April 4, Sincyr contacted Gottardi to provide him with information on drug trafficking, some of which he had been involved in. Sincyr relayed to Gottardi that in the recent days a Hispanic male had been staying at his home.

22. Although the affidavit references another Hispanic male, Luis Pacheco, contrary to the Defendant’s assertion, the affidavit does not imply that these Hispanic males are actually one and the same person. The affidavit states that Sincyr

advised that the male’s name is supposedly[] “Carlos”, and Carlos had cocaine and heroin in his possession when he arrived at his residence. Sincyr advised that as of this date (April 04, 2018), Carlos still has cocaine and heroin in his possession at his (Sincyr’s) residence, which Carlos is selling. Sincyr advised that Carlos has him deliver the drugs to customers. Sincyr advised that “Carlos” stays on the couch at his residence

23. According to the affidavit, Sincyr told an MDEA agent that “Carlos” was still at Dartmouth Street selling crack cocaine and heroin as of April 5, 2018, the date of the affidavit and warrant.

24. The Defendant attempts to distinguish the circumstances present here from *Allard* because in that case, the drug transactions occurred at the residence. He argues that here, drug transactions were alleged to have taken place in other locations.

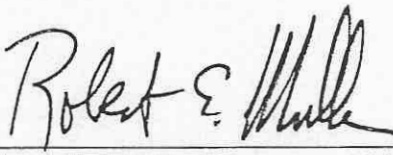
25. However, the question is whether probable cause that evidence of a crime will be found exists for the place to be searched. Even if drug transactions were alleged to take place in other locations, probable cause would exist if there is a fair probability that the drugs being supplied at other locations were being stored at the Dartmouth Street residence. The affidavit makes it clear that drugs are being stored at Dartmouth Street, and specifically states that they are in the possession of "Carlos."

26. Sincyr, the homeowner and resident of Dartmouth Street, informed Gottardi of the same and exposed himself to criminal liability in doing so.⁴ Given the substantial amount of detail in the affidavit, and that it must be viewed in a positive light, the Court determines that probable cause existed to search the home and "any and all persons" within it for evidence related to drug trafficking.⁵

IV. Summary:

27. For the reasons stated above, the Defendant's Motion to Suppress is denied.

Date: 7/3/19

BY 
Robert E. Mullen, Deputy Chief Justice
Maine Superior Court

⁴ The fact that the information was self-incriminating lends to its reliability. See *State v. Arbour*, 2016 ME 126, ¶ 13, 146 A.3d 1106 (explaining that "an informant's credibility is bolstered if the affidavit contains statements against his or her penal interest, even if the informant is from the 'criminal milieu.'"). Also, Sincyr's firsthand knowledge of the information he provided supports the existence of probable cause. *Id.*

⁵ Based on this holding, the court need not consider whether the good faith exception to the exclusionary rule applies. However, if it were to, this Court concludes that it applies. The officer acted in objectively reasonable reliance on the warrant as the affidavit is not so lacking in probable cause that belief in its existence is objectively unreasonable, and the warrant is not so facially deficient that it could not reasonably be presumed to be valid. See *United States v. Leon*, 468 U.S. 897, 923 (1984). Further, it was reviewed by an Assistant District Attorney for probable cause before being submitted to a judge.

STATE OF MAINE
SOMERSET, SS.

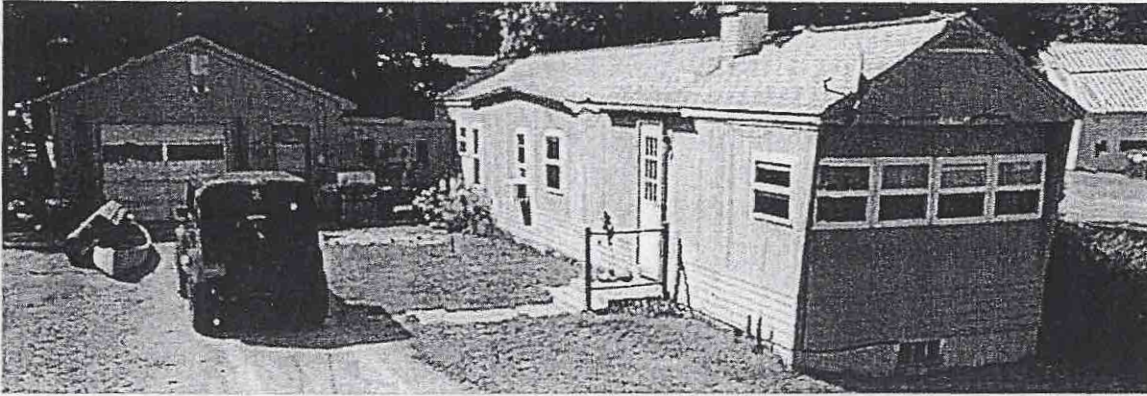
UNIFIED COURT
DOCKET NO.

SEARCH WARRANT

TO: Any officer authorized by law to execute this search warrant. On the basis of the **AFFIDAVIT BY:** Det. Lt. Carl E. Gottardi, II of the Somerset County Sheriff's Department: **DATED,** April 05, 2018, which affidavit has been sworn to by the said Affiant and accompanies this search warrant and will be filed with this search warrant in the District Court.

I am satisfied that there is probable cause to believe that there are grounds for the issuance of a search warrant. You are therefore commanded to search the place(s) and/or person(s) described below for the property and/or person(s) described below and, if the property and/or person(s) is/are found, to seize such property and/or person(s) and prepare a written inventory of the property seized.

PLACE(S) OR PERSON(S) TO BE SEARCHED: The person, body cavities (if applicable), residence & property of David A. Sincyr, DOB/01-01-1962, Beverly J. Sincyr, DOB/01-02-1962 and unknown persons, said residence being located at 3 Dartmouth Street, in Skowhegan, Maine, said residence being more fully described as a tan 12'X50' house trailer with green window shutters (front side, facing Rt. 201), said residence has an attached on car garage, said residence is the first residence in on Dartmouth Street, on the right hand side of the roadway, as you travel onto Dartmouth Street from the intersection of Dartmouth Street/Rt. 201; any outbuildings (which are under direct control of/can be accessed by the Sincyr's); any persons/motor vehicles that are present at said residence/property, and/or arrive/depart from said residence/property (who are not conducting official, non - drug related business, such as postal workers etc.), during the execution of this search warrant. A photograph of the herein described residence is attached to page #2 of this search warrant.



*****#3 Dartmouth Street, Skowhegan*****

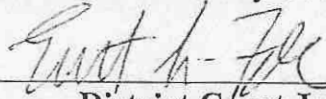
PROPERTY OR ARTICLE(S) TO BE SEARCHED FOR: Controlled drugs and other contraband, including cocaine and heroin; business records in the nature of journals, ledgers, computer storage devices/CDs, information stored in computers/telephones and cellular telephones, other books and records, all pertaining to the acquisition, possession, sale and distribution of said controlled drugs and contraband; sums of money obtained from the sale of controlled drugs and contraband, or for the purchase of said items; drug related paraphernalia and tools, including scales, relating to the sale, processing and distribution of said controlled drugs; firearms, which are directly connected to said controlled drugs and contraband; photographs of controlled drugs and contraband, to include undeveloped rolls of camera film, which your affiant would have developed; video/audio recordings, that may contain documentation of said controlled drugs, contraband and illicit drug activities; articles/documentation, demonstrating dominion & control of said property/contraband; any articles that are being illegally possessed by persons referred to herein; DNA/fingerprint samples from the persons referred to herein (if applicable), to determine ownership of controlled drugs/contraband.

NAME OF OWNER OR OCCUPANT OF PREMISES IF KNOWN: David A. Sincyr, DOB/01-01-1962, Beverly J. Sincyr, DOB/01-02-1962 and unknown persons.

FOR GOOD CAUSE SHOWN, this NIGHTTIME - NO KNOCK - BODY CAVITY search warrant, may be executed in either the day time or nighttime, including between the hours of 9:00 P.M. and 7:00 A.M. and shall be returned, together with a written inventory, within 14 days of the issuance hereof to the Somerset Division of the Unified District Court of Maine.

APPENDIX C

Issued at Skowhegan, in the County of Somerset, this 5th day of April, 2018, at
107 AM - PM.



District Court Judge

AFFIDAVIT AND REQUEST FOR SEARCH WARRANT

I, Carl E. Gottardi II being first duly sworn on oath, state as follows:

That I am a Detective Lieutenant, with the Somerset County Sheriff's Department, in the County of Somerset and State of Maine.

That I have probable cause to believe and do believe that presently located on/in the person, body cavities (if applicable), residence & property of David A. Sincyr, DOB/01-01-1962, Beverly J. Sincyr, DOB/01-02-1962 and unknown persons, said residence being located at 3 Dartmouth Street, in Skowhegan, Maine, said residence being more fully described as a tan 12'X50' house trailer with green window shutters (front side, facing Rt. 201), said residence has an attached on car garage, said residence is the first residence in on Dartmouth Street, on the right hand side of the roadway, as you travel onto Dartmouth Street from the intersection of Dartmouth Street/Rt. 201; any outbuildings (which are under direct control of/can be accessed by the Sincyr's); any persons/motor vehicles that are present at said residence/property, and/or arrive/depart from said residence/property (who are not conducting official, non - drug related business, such as postal workers etc.), during the execution of this search warrant. A photograph of the herein described residence is attached to page #2 of this search warrant, there is now being concealed certain property, to wit:

1. Controlled drugs and other contraband, including cocaine and heroin, said property consists of contraband and property which constitutes evidence of the commission of the criminal offenses of Trafficking, Furnishing & Possession in Scheduled Drugs, which is seizable, pursuant to Rule 41(b) (1) and Rule 41(b) (2) of the Maine Rule of Criminal Procedure.
2. Business records in the nature of journals, ledgers, computer disks/computer storage devices, information stored in computers/telephones, cellular telephones, audio/video recordings, and other books and records, all pertaining to the acquisition, possession, sale and distribution of controlled drugs and contraband; articles/documentation showing dominion & control of said property/contraband; any articles that are being illegally possessed by said persons; DNA/fingerprint samples from the persons referred to herein (if applicable), to determine ownership of controlled drugs/contraband, which are evidence of criminal conduct and other contraband, which is seizable pursuant to Rule 41(b) (1) of the Maine Rules of Criminal Procedure.

APPENDIX D

3. Sums of money obtained from the sale of controlled drugs and contraband, or for the purchase of said items, which are also evidence of criminal conduct specified herein, and which is seizable pursuant to Rule 41(b) (1) of the Maine Rules of Criminal Procedure.
4. Drug related paraphernalia and tools, including scales, relating to the sale, processing, documentation and distribution of said controlled drugs, which is also evidence of criminal conduct specified herein, and which is seizable pursuant to Rule 41(b) (1) of the Maine Rules of Criminal Procedure.
5. Firearms, which are directly connected to illicit drugs and contraband, or which are being possessed illegally and which are also evidence of the criminal conduct specified herein, and which are seizable, pursuant to Rule 41(b) (1) of the Maine Rules of Criminal Procedure.

The facts and circumstances which lead your affiant to believe this are as follows:

1. On February 09, 2018, your affiant executed a drug search warrant at the herein described residence and property of David Sincyr, located at 3 Dartmouth Street, in Skowhegan, at approximately 0530hrs. The search warrant was obtained by your affiant on February 08, 2018 and the search warrant was reviewed and authorized by District Court Judge, Evert Fowle. A copy of this search warrant is attached to this search warrant affidavit and incorporated herein as exhibit #1.

As noted in exhibit #1, David Sincyr was reportedly involved in the sales/use of crack cocaine and heroin, as Sincyr had been involved in, in the past, as detailed in exhibit #1. As noted in exhibit #1, Sincyr has a history, by information received from reliable sources, as well as Sincyr's own past admissions, of being involved with out of State drug dealers, who Sincyr has allowed to sell drugs from his residence, with Sincyr assisting in the drug trafficking activities.

On February 09, 2018, during the search warrant execution, the only persons present at the residence upon entry, were David and Beverly Sincyr. During the search of the residence, items of drug related paraphernalia, which tested positive for the presence of Fentanyl, were located in the bedroom of David Sincyr, as well as in the bedroom of Mackenzie Garland.

APPENDIX D

Your affiant interviewed David Sincyr on February 09, 2018. In part and in substance, Sincyr advised that he has been using drugs, such as crack cocaine and heroin. Sincyr advised that he has been selling the aforementioned drugs, up until the day prior, as he will go and get the drugs from his drug supplier several times a day, when persons that want the drugs give him the money for the drugs. Sincyr advised that he will get a little bit of the drugs, or cash, for getting the drugs for his friends. Sincyr advised that the straws in his bedroom may test for heroin, pills or cocaine. Sincyr advised that his source of cocaine and heroin derives the drugs from their out of State source. Sincyr identified his in State source and he also identified the out of State source, via a photograph of the out of State source with the in State source, which your affiant obtained from Agent Blodgett.

On February 09, 2018, Agent Ron Blodgett, of the Maine Drug Enforcement Agency (MDEA), interviewed Beverly Sincyr. In part and in substance, Beverly advised that she did not want to get into the dealings that Dave has been doing, as she did not want to get Dave in trouble, so all that she basically advised was that Dave has been using crack cocaine and meeting people to get crack cocaine. Beverly advised that we should speak with Kenzie Garland, as these were "her group of people".

Your affiant would note that the information contained in exhibit #1 was basically corroborated by evidence seized and the Sincyr's own admissions.

2. On April 04, 2018, your affiant was contacted by David Sincyr, as Sincyr wanted to provide your affiant with drug trafficking related information, which he himself has been involved in, in April of 2018.

In part and in substance, Sincyr advised that he was recently contacted by Tom Schmidt of Corinna, who is Miranda Schmidt's father, as Tom wanted to send some out of State drug dealers to Sincyr's residence. Sincyr advised that over the past couple of days, there has been a Hispanic male, who does not speak good English, staying at his herein described residence. The Hispanic male has amounts of crack cocaine and heroin in his possession, which the male is selling. Sincyr advised that he has been selling these drugs for the male as well, as the male will have him deliver the drugs to various customers. Sincyr advised that he does not want the male(s) at his residence selling drugs, nor did he want to sell drugs for the male(s), but he felt threatened to do so, as the male(s) at his residence had made a comment about his (Sincyr's) sick wife (Beverly), which Sincyr took to mean that if he

did not allow the male(s) to deal from his residence, with him helping them, that something may happen to his wife. Sincyr also advised that Makenzie Garland was no longer staying at his residence, as Chad Demo and his girlfriend are now staying at his residence. Sincyr advised your affiant that he has not observed the male(s), or Carlos, possessing any firearms.

In regards to Tom Schmidt, your affiant is familiar with Schmidt. Other law enforcement officers and your affiant have received information in 2017 and 2018, regarding Schmidt reportedly being involved in the sales of heroin. In regards to Miranda Schmidt, other law enforcement officers and your affiant have received information on Miranda in 2018, regarding Miranda being involved with Hispanic males from Connecticut, who reportedly sell large amounts of heroin and crack cocaine. Your affiant is aware that on February 27, 2018, Miranda was arrested in Fairfield, by the Fairfield Police Department, as Miranda was in possession of approximately 67.5 grams of heroin. At the time of her arrest, Miranda was a passenger in a motor vehicle with a female from Canaan (Cherie Curtis) and a Hispanic male from Connecticut (Luis Pacheco, DOB/09-12-1970), who is reportedly Miranda's boyfriend and drug supplier. Your affiant obtained the information regarding Miranda's arrest/Miranda herself, from reports generated by the Fairfield Police Department of the arrest, along with information obtained by your affiant from other sources.

3. On April 04 - 05, 2018, your affiant had Agent Blodgett speak with David Sincyr, to obtain all of the details about the drug trafficking activities that were/are reportedly taking place at the Sincyr's herein described residence, at this present time.

On April 04, 2018, David Sincyr advised Agent Blodgett, in part and in substance, that two days ago, he received a telephone call from Tom Schmidt, who advised him that he (Sincyr) needed to let some people stay at his house. Sincyr advised that he did not want the persons at his house, but Schmidt sent the people over anyways. Sincyr advised that Chad Demo transported one of the males to his residence and that the male did not speak good English. Sincyr advised that the male's name is supposedly, "Carlos", and Carlos had cocaine and heroin in his possession when he arrived at his residence. Sincyr advised that as of this date (April 04, 2018), Carlos still has cocaine and heroin in his possession at his (Sincyr's) residence, which Carlos is selling. Sincyr advised that Carlos has him deliver the drugs to customers.

Sincyr advised that "Carlos" stays on the couch at his residence and Demo and his girlfriend (Casey) are staying in the bedroom that Makenzie Garland had been staying in. Sincyr advised that Demo is driving his (Demo's) mother's car, which is silver in color. On April 04, 2018, when Agent Blodgett drove by Sincyr's herein described residence, he observed a silver 2015 Chrysler car parked at the residence (Maine registration #8171VA). The car, according to the Maine Bureau of Motor Vehicles (BMV), is registered to Karen Demo, DOB/06-08-1963, who is the mother of Chad Demo, to Agent Blodgett's knowledge.

Sincyr advised that another male had shown up at his residence on April 03, 2018 and this male is the boyfriend of Miranda Schmidt, who he knows, as he had been obtaining drugs from Schmidt and the male in the past (2018). Your affiant would note that Sincyr had previously identified a photograph (obtained from Agent Blodgett at that time) of Miranda Schmidt and her herein referenced boyfriend, which your affiant had shown Sincyr, as noted in paragraph #1 of this search warrant affidavit. Sincyr advised that he was afraid of the males, as they had commented to him, "you have wife, you do this for us", which Sincyr took to mean that he needed to sell drugs for them, or they would make life hard, or worse, for his wife and he.

Your affiant obtained the above information directly from Agent Blodgett.

4. On April 04, 2018, when Agent Blodgett drove by Sincyr's herein described residence, he was flagged down by a person. The person is a known illicit drug trafficker/illicit drug user, by his/her own admissions, as well as by information received by other reliable sources. This person has been a confidential informant for MDEA in the past and he/she has made controlled drug purchases for MDEA in the past, to your affiant's knowledge. This person is reportedly selling/using illicit drugs at this present time, per information that your affiant has received from other sources.

This person advised Agent Blodgett that the police should be watching the trailer at the end of the street and he/she said the trailer was "David's". This person advised that "David" has been selling drugs from this trailer, even after his place got raided about six weeks ago. This person advised that he/she did not know the information on "David" first hand, as he/she had obtained the information from other persons that had the knowledge.

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Your affiant obtained the information above directly from Agent Blodgett. Agent Blodgett advised that the residence of "David", as described by this person, is the herein described residence of David Sincyr.

5. On April 05, 2018, your affiant had Agent Blodgett speak with David Sincyr. On this date, Sincyr advised Agent Blodgett, in part and in substance, that the Hispanic male (Carlos) is still presently at his herein described residence selling heroin and crack cocaine. Sincyr advised that Carlos is still staying on his couch and that Chad Demo and his girlfriend are also still staying at his herein described residence.

Sincyr advised that Carlos still has cocaine and heroin in his possession for sale at this present time, which he has personally observed. Sincyr advised that Carlos keeps some of the drugs in his immediate possession and he has also buried some of the drugs in his (Sincyr's) garage, in a coffee can, to his own knowledge.

Sincyr advised that he has been aiding Carlos in selling his drugs, as he will deliver the drugs to the customers, with persons calling him on his cellular telephone when they want drugs. Sincyr advised that he is supposed to be paid \$200.00 a week for letting the male(s) stay at his residence and for assisting them in selling their drugs.

Sincyr advised that he does not want the males at his residence, nor does he want to sell drugs for the males. Sincyr advised that Demo does not sell drugs for the males to his knowledge, but Demo does transport the males around in his car.

Sincyr advised that the information that he has provided, as noted in paragraphs #2, #3 and this paragraph of this search warrant affidavit, is 100% truthful.

Your affiant obtained the above referenced information directly from Agent Blodgett.

6. Your affiant believes that David Sincyr and other persons referred to herein, are presently selling – possessing heroin and cocaine, at/from/in the herein described residence, property of the Sincyr's, as well as on/in any persons, motor vehicles and property of any persons located at/departing from said residence/property, during the execution of this search warrant. Your

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affiant bases this conclusion on the information supplied by the persons referred to herein and David Sincyr himself, which reportedly show that as of April 05, 2018, David Sincyr has an out of State person at his herein described residence, who is reportedly possessing/selling crack cocaine and heroin, with Sincyr's assistance, which is the same type of activity that Sincyr has been involved in, in the past, as detailed in exhibit #1.

As noted in paragraph #5 of this search warrant affidavit, David Sincyr advised that Carlos is still presently at his herein described residence selling crack cocaine and heroin, with Carlos possessing amounts of these drugs at the residence, at this present time.

7. Your affiant has found it common for illicit drug traffickers/persons in the company of illicit drug traffickers/illicit drug users, who are in motor vehicles, to store said illicit drugs inside their property - personal belongings, to further conceal said illicit drugs.

Your affiant has found it common for illicit drug traffickers - persons in possession of illicit drugs, to conceal said illicit drugs inside their body cavities, while transporting said illicit drugs in motor vehicles, to avoid detection of said illicit drugs by the police. Your affiant has personally been advised by apprehended illicit drug traffickers - persons who have possessed illicit drugs, that this is a common practice used by them, when transporting said illicit drugs.

Your affiant has found it common for persons that are located inside motor vehicles with illicit drug traffickers, to possess illicit drugs, which said persons had just acquired from said illicit drug trafficker. Your affiant has found it common for said persons to possess cash for the purchase of said illicit drugs, as well as illicit drug related paraphernalia, to ingest said illicit drugs.

Your affiant has found it common for persons who are at the residences of illicit drug traffickers, arrive at the residences of illicit drug traffickers, and/or are departing from the residences of illicit drug traffickers, to possess illicit drugs on their person, and/or in their motor vehicles/property. Your affiant would note, that if persons present at - departing from illicit drug traffickers residences, had just purchased illicit drugs from the illicit drug traffickers, said persons would have illicit drugs on their person, and/or in their motor vehicle/property.

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Your affiant has found it common for persons who are arriving at an illicit drug trafficker's residence, to have amounts of cash on their person, and/or in their motor vehicle, to use for the purchase of said illicit drugs. Your affiant has also found it common for persons at an illicit drug trafficker's residence, to be delivering illicit drugs to the drug dealer.

Your affiant has found it common for persons that are at, and/or arriving at an illicit drug trafficker's residence, to possess drug related paraphernalia on their person, and/or in their motor vehicle, which these persons would use to ingest said illicit drugs.

Your affiant has found it common for illicit drug traffickers, who use illicit drugs themselves, to possess illicit drugs and drug related paraphernalia, on their person, in their residence, in their property, as well as in any motor vehicle that they may be located in.

Your affiant has found it common for illicit drug traffickers and their drug associates, to discard illicit drugs when they observe the police trying to apprehend them. In October of 2017, a person suspected of trafficking in Fentanyl, discarded a large bag of Fentanyl that he had on his person, prior to the police thoroughly searching him. In February of 2018, suspects threw a large bag of cocaine out of a second story window, along with drug related paraphernalia, when your affiant/officers were entering the residence to execute a drug search warrant, to try and avoid getting caught with the drugs/paraphernalia. If illicit drugs/illegal contraband has been discarded, and/or is located, and no persons present during this search warrant execution will claim ownership of said illicit drugs – illegal contraband, your affiant will take DNA - fingerprint samples from these persons, to aid in identifying the owner of said illicit drugs & illegal contraband.

Your affiant has found it common for illicit drug traffickers to take illegal articles, such as stolen property & firearms, in trade for illicit drugs. Your affiant has also found it common for illicit drug purchasers to trade said illegal articles with drug dealers for illicit drugs. If any illegally possessed articles are located during the execution of this search warrant, said articles will be seized, pursuant to this search warrant.

8. Your affiant requests a **NIGHTTIME - NO KNOCK - BODY CAVITY** search warrant be issued as cocaine and heroin are drugs that can be easily concealed and destroyed, if persons are allowed any amount of time to react to the police presence.

Your affiant has executed numerous drug search warrants on illicit drug traffickers/persons possessing illicit drugs, over the past several years, and said persons have advised your affiant of various methods they employ, and/or said persons have employed during search warrant executions, to aid them in disposing of illicit drugs, when the police try to apprehend them, especially if said persons have any amount of time, to react to the police presence. These methods described to your affiant – have been employed by these persons during search warrant executions, include; swallowing said drugs, concealing said drugs inside their body cavities – undergarments, flushing said drugs down a toilet or sink – throwing said drugs in common areas where others are present, so ownership of said illicit drugs can not be linked to them, or throwing said drugs out of a motor vehicle.

In March of 2017, pursuant to a drug search warrant obtained by your affiant, persons who were possessing/selling heroin/cocaine, did flush said drugs down a toilet, when officers were trying to gain access to their residence, during the search warrant execution. If persons during the execution of this search warrant flush illicit drugs and/or contraband down a toilet/sink, your affiant, pursuant to this search warrant, may utilize the assistance of the public works department/licensed plumber, to aid in recovering said illicit drugs/contraband from the drain pipes/sewer pipes, in any manner that the public works officials/licensed plumber feels is necessary.

Your affiant has executed past drug search warrants, where persons have concealed drugs, such as heroin/cocaine/pills, inside/near their body cavities, or given said drugs to others present with them, to hide inside/near their body cavities, to avoid detection of said drugs by the police, especially if said persons have any amount of time, to react to the police presence.

Your affiant has found it common for persons inside motor vehicles with illicit drug traffickers, to hide illicit drugs on their person, in or near their body cavities, for the illicit drug trafficker, to avoid detection of said illicit drugs by the police. In June of 2017, a person that was in a motor vehicle with a suspected heroin dealer placed a large amount of heroin inside one of their body cavities when your affiant had their motor vehicle stopped to

execute a search warrant on the heroin dealer. The person admitted that the heroin dealer asked them to conceal the heroin, to avoid the heroin's detection by the police.

If it is believed that Sincyr, or any other persons present during the execution of this search warrant, have illicit drugs concealed inside their body cavities, your affiant, pursuant to this search warrant, will have their body cavities examined by a licensed medical professional and/or checked by a body scanning machine. If illicit drugs are located during said examination/body scan, a licensed medical professional will remove said drugs in whatever way they deem necessary, pursuant to this search warrant. The Somerset County Correctional Facility has a body scanning machine at their facility, which is used by trained personnel, to screen inmates for the presence of illicit drugs and other contraband. Your affiant would note that if persons quickly conceal illicit drugs, such as heroin/Fentanyl inside their body cavities, and/or swallow illicit drugs, and said drugs are not properly and securely packaged to prohibit the illicit drugs from being absorbed into a person's body, said persons could overdose, or possibly die, if the drugs are not detected quickly and removed from their body.

Your affiant plans to execute this search warrant, if possible, when Sincyr is believed to be present at his herein described residence, as Sincyr would most likely have illicit drugs and drug related paraphernalia at his residence while he is present, as the out of State source of the drugs would most likely be present. Since your affiant is not sure what time Sincyr may be present at his herein described residence, a **NIGHTTIME** search warrant is requested.

9. Your affiant has been a Somerset County Sheriff's Deputy for over 35 years. Your affiant has attended numerous courses at the Maine Criminal Justice Academy in Waterville, Maine, and other locations, relating to search warrants, illicit drug detection and the identification and arrest of persons who traffic in/furnish/possess/manufacture illicit drugs.

Your affiant has participated in well over one thousand drug investigations. These investigations have led to the apprehension and conviction of numerous persons who were trafficking – furnishing and possessing illicit drugs, as well as cultivating marijuana. Your affiant has had over thirty years of experience in identify growing marijuana plants, and apprehending those

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persons responsible for cultivating said marijuana plants. Over the past thirty years, your affiant has seized thousands of marijuana plants, and identified the different ways that indoor - outdoor marijuana cultivators operate their illicit cultivation operations.

Your affiant possesses State wide arrest powers, relating to criminal cases that originated in Somerset County.

Your affiant feels there is, and will be, controlled drugs, to include heroin and cocaine, drug related paraphernalia, equipment used to facilitate and distribute controlled drugs, as well as sums of money possibly derived from the illegal sales of controlled drugs, on/in the person, residence, property & motor vehicles of/used by David Sincyr and other persons referred to herein.

Your affiant has found it common for persons connected with illicit drugs, to take photographs and/or video recordings (using cameras & cellular telephones) of themselves and associates of theirs, using and/or possessing illicit drugs, especially when these persons have possessed large quantities of said illicit drugs, and/or grown marijuana plants that said persons are proud of.

Your affiant has found it common for illicit drug traffickers - illicit drug users/illicit drug purchasers, to use their cellular telephones for drug related matters, such as setting up drug deals and also to advise customers what drugs they have available for sale. Your affiant has found it common for illicit drug traffickers - illicit drug users, to store drug related information, such as drug dealer's names - telephone numbers, drug customers names - telephone numbers, drug related text messages and drug related photographs, in their cellular telephones. As noted in paragraph #5 of this search warrant affidavit, persons will contact Sincyr, via his cellular telephone, when they want to purchase drugs from Carlos/him.

Your affiant has found it common for illicit drug traffickers to store illicit drug information - photograph's - videos, as well as to communicate with others regarding illicit drugs, via computers - computer related storage devices, especially via the social media internet web site, Facebook.

Your affiant plans to search any computers - computer related storage devices - cellular telephones, pursuant to this search warrant, during the execution of this search warrant, or shortly after their seizure. If it is not

possible to thoroughly search said devices during the execution of this search warrant, or if said devices contain drug related material, your affiant will seize said devices. If said devices are seized, your affiant, pursuant to this search warrant, will search said devices. If said devices are seized and your affiant is unable to search said devices shortly after their seizure, your affiant will apply for a new search warrant to complete said examinations.

Your affiant has found it common for illicit drug traffickers to store illicit drugs, proceeds from drug trafficking activities and illicit drug paraphernalia, in and around outbuildings located on their property (that they have direct control of/access to), to avoid detection of said articles by the police, or other persons that may try and steal said articles from them.

Your affiant has found it common for illicit drug traffickers to have documentation in their possession, which relates to drug customers of theirs, as well as amounts of money owed to them by said drug customers. This type of documentation often shows the name of the drug customer, amounts of illicit drugs sold – fronted to the drug customer, along with the dates of the transactions, all of which is evidence, identifying the identity of drug customers, as well as showing the volume and amounts of illicit drugs being sold by the illicit drug trafficker.

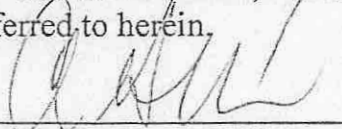
Your affiant has found it common for illicit drug traffickers to have in their possession articles/documentation demonstrating dominion & control of said property/contraband, to include residences owned/used by the illicit drug trafficker, as well as other property, such as storage units, rental motor vehicles etc., which are also owned/used by the illicit drug trafficker, to further their illicit drug trafficking activities.

10. First Assistant District Attorney, Frank Griffin, has reviewed the information contained in this search warrant and affidavit. ADA Griffin advised your affiant, that he believes sufficient probable cause exists, to believe that David Sincyr and other persons described herein, are presently involved in the illicit drug activities described herein, and that evidence of said activities, may be located at/in/on the herein described residence, property, outbuildings, motor vehicles and persons described herein.

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WHEREFORE, in view of the foregoing, your affiant prays that a search warrant issue, commanding your affiant and other duly authorized law enforcement officers to search the herein described persons, residence, outbuildings, motor vehicles and property described herein, for items of evidence and other contraband which are referred to herein.

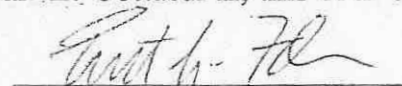
DATED: April 05, 2018



Carl E. Gottardi II

STATE OF MAINE
SOMERSET, SS.

Sworn to before me as a true statement by Carl E. Gottardi II, this 05th day of April, 2018.



District Court Judge